

In the Matter of the Application of ) Case No. 18-0371-EL-WVR  
AEP Energy, Inc. for a Partial Waiver of )  
OAC Rules 4901:1-29-06 and 4901:1-21-06. ) Case No. 18-0372-GA-WVR

<sup>2</sup> See <https://www.chooseenergy.com/blog/deregulation/door-to-door-energy-scam/>; <https://www.dispatch.com/article/20140615/NEWS/306159950>.

AEP Energy wants to use a less protective and diluted verification process than the PUCO's rules require when customers have a personal communication device (e.g., iPhone, Android, personal computer<sup>3</sup>) capable of receiving electronic messaging or an e-mail to access hyperlinks. Instead of the PUCO's complete independent third-party verification process, for portions of the process AEP Energy proposes to have customers themselves verify that they have changed service via a set of yes-or-no questions. Under AEP Energy's proposal, the independent third-party verifier would have a minimal role in the transaction.

The Office of the Ohio Consumers' Counsel ("OCC") recommends that the PUCO reject AEP Energy's proposed alternative to the independent third-party verification process in the PUCO's rules. Ohioans have too many priorities for their time – including children, aging parents, and work – to be experts in whether the pricing and terms of a utility marketer's offer would be good or bad for them. They need the consumer protections of the PUCO's rules. AEP Energy's proposal would significantly degrade those consumer protections. The PUCO should not allow this to happen.

## **II. STANDARD OF REVIEW**

The PUCO may waive any non-statutory requirement of the competitive electric marketing and competitive gas marketing rules for good cause shown.<sup>4</sup> AEP Energy has the burden of proof in this case. As discussed in these Comments, AEP Energy has not shown good cause for the requested waiver of Ohio Adm. Code 4901:1-21-06 and Ohio Adm. Code 4901:1-29-06(E).

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<sup>3</sup> See Application (March 6, 2018) at 3.

<sup>4</sup> Ohio Adm. Code 4901:1-21-02(C); Ohio Adm. Code 4901:1-29-02(C).

### III. RECOMMENDATIONS

- A. The PUCO should reject AEP Energy’s proposal because it lacks the independent oversight provided under the third-party verification process required by the PUCO that protects consumers from unscrupulous door-to-door marketing practices.**

Ohio law prohibits switching, or authorizing the switching of, a residential customer’s electric or natural gas supplier without the customer’s prior consent.<sup>5</sup> The law also states that the PUCO may require that the customer’s consent be verified through an independent third party.<sup>6</sup> The PUCO’s rules require door-to-door marketers to follow the same independent third-party verification process used in telephonic solicitations by electric and natural gas marketers.<sup>7</sup> Among other things, the door-to-door marketing rules require that the salesperson leave the customer’s property before the independent third-party verification has begun and not return “before, during, or after” the third-party verification process.<sup>8</sup> This is to protect consumers by preventing the salesperson from influencing the customer’s responses to the independent third-party verifier’s questions.

Another way the PUCO’s rules protect consumers is that the independent third-party verifier must make an audio recording of the entire telephonic conversation with the customer.<sup>9</sup> This recording helps confirm the identity of the customer and is evidence of the customer’s acceptance of the specific terms and conditions of the marketer’s contract.

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<sup>5</sup> R.C. 4928.10(D)(4); R.C. 4929.22(D)(3).

<sup>6</sup> *Id.*

<sup>7</sup> Ohio Adm. Code 4901:1-21-06(D)(1)(h); Ohio Adm. Code 4901:1-29(D)(6)(b).

<sup>8</sup> Ohio Adm. Code 4901:1-21-06(D)(1)(h)(ii); Ohio Adm. Code 4901:1-29(D)(6)(b)(ii).

<sup>9</sup> Ohio Adm. Code 4901:1-21-06(D)(2)(a); Ohio Adm. Code 4901:1-29(E)(1).

AEP Energy's proposal, however, would bypass many of these consumer protections. Rather than having the independent third-party verifier ask the customer all the questions required by the PUCO's rules, AEP Energy is proposing that customers respond to some of the questions through a link sent to them on their personal communications device.<sup>10</sup> The link is to AEP Energy's electronic order verification form that requires customers to respond to a number of yes-or-no questions.<sup>11</sup>

Many of the questions to be answered through the link are the types of questions that could interfere with customer rights. Some of the problematic questions involve:<sup>12</sup> (1) whether the customer understands AEP Energy will be the customer's electric/gas supplier and it will take one or two billing cycles for enrollment completion; (2) the rate that AEP Energy would charge the customer; (3) whether the customer understands that any applicable utility charges and state and local taxes may also be applied to the monthly bill; (4) the term of contract; (5) any early termination fee, if applicable; (6) that the local electric or gas utility will continue to deliver electricity/gas, read meter(s), handle emergency care, and send the monthly invoice; (7) that AEP Energy's charges will be a separate line item on the utility's monthly invoice; (8) whether the customer wants to enroll in AEP Energy's Budget Billing Program, if available; (9) the percentage of renewable energy provided and specifications for renewable energy certificates if the customer elected a renewable energy offer; (10) that the contract may automatically renew on a month-to-month variable price or under new terms or conditions with prior

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<sup>10</sup> Application at 5.

<sup>11</sup> *Id.* The customer apparently is expected to answer "yes" to all the questions. If the customer responds with a "no," "a pop-out window would appear with a further explanation of the question and an invitation to change the response if desired." *Id.* at 6.

<sup>12</sup> *Id.* at 5-6.

written notice to the customer; (11) the customer's account number; (12) rescission information, if applicable; and (13) a statement that the customer will receive a letter from the local utility regarding the switch to AEP Energy.

Under AEP Energy's proposal, a customer could have to respond to these questions under circumstances where the salesperson may influence the customer's response. This is contrary to the consumer protections provided under the PUCO's rules, and thus the PUCO should reject AEP Energy's proposed waiver.

AEP Energy states that once the customer answers all the questions in the electronic order verification form, the independent third-party verifier will call the customer.<sup>13</sup> But the salesperson does not leave the customer's property until the customer receives the call from the third-party verifier. "Upon receipt of such call, the field sales agent will leave the customer's premises for the duration of and after the third party verification call."<sup>14</sup> Thus, the salesperson is on the customer's property (and presumably standing or sitting next to the customer) while the customer is responding electronically to the questions usually reserved for the independent third-party verifier. This means that the salesperson could assert the type of undue influence over the customer that the PUCO's rules are meant to prevent.

AEP Energy's proposal would significantly diminish the role – and the effectiveness – of the independent third-party verification process in the PUCO's rules.

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<sup>13</sup> *Id.* at 6.

<sup>14</sup> *Id.*

The only information that AEP Energy has proposed to have verified through the independent third-party verification would be (1) permission to record the call, (2) the customer's identity, (3) if the person speaking to the verifier is not the account holder, whether the person is the account holder's spouse or holds power of attorney to authorize a change in the customer's energy supplier, (4) that AEP Energy is an independent seller and the customer can remain with the local utility or other supplier, (5) that AEP Energy's sales representative has left the property, and (6) whether the field sales agent provided to or e-mailed the customer signed enrolled terms and the welcome brochure.<sup>15</sup>

The third-party verifier would not even have to obtain the customer's acknowledgment that he/she has consented to enroll with AEP Energy, as required by the PUCO's rules.<sup>16</sup> And the third-party verification process proposed by AEP Energy fails to verify through an oral statement that the customer accepts each of the principal terms and conditions for the service, as required by the PUCO's rules.<sup>17</sup>

To protect consumers from potentially being subjected to unscrupulous sales practices, the PUCO's rules require independent third-party verification of the customer's responses to the questions specified in the rules, at a time when the salesperson is not at the customer's home. That would not be the case under AEP Energy's proposal. Although the third-party verifier may have access to the customer's electronic responses to AEP Energy's electric order verification form, there is no guarantee that the responses are truly those of the customer. AEP Energy has not met its burden of showing good cause for its proposal, and the PUCO should deny the application in this case.

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<sup>15</sup> *Id.* at 7.

<sup>16</sup> Ohio Adm. Code 4901:1-29-06(D)(6)(b).

<sup>17</sup> Ohio Adm. Code 4901:1-29-06(D)(f).

**B. The PUCO should deny the application because AEP Energy has failed to show how the use of GPS and the electronic order verification form is a reasonable surrogate for the consumer protections of the independent third-party verification allowed by Ohio law and required by the PUCO's rules.**

AEP Energy claims that its door-to-door salespeople will be provided with a GPS and an Internet-enabled computer tablet that is sufficient to demonstrate that the salesperson was at the customer's home.<sup>18</sup> AEP Energy claims that the GPS mechanism tracks the time and location of all customer solicitations made by AEP Energy.<sup>19</sup> According to AEP Energy, the combination of the GPS tracking function of the salesperson's tablet and the electronic order verification form verifies the customer's consent and acknowledgement of the information required by the PUCO's rules.<sup>20</sup> AEP Energy overstates the effectiveness of its technology.

A marketer's ability to track and prove that its salesperson was on a customer's property is irrelevant to demonstrating that the customer actually consented to a change in utility service supplier. The technology used by AEP Energy shows only where the solicitation occurs. It does not convey the substance of the solicitation or the customer's consent to the transaction. For the reasons discussed in Section III.A., the GPS and communications technology are an inadequate surrogate for the PUCO's independent third-party verification process, which involves the audio recording of the customer's answers to specific questions regarding the transaction.

AEP Energy's proposal could harm customers by allowing door-to-door salespeople to be present while customers respond to some of the questions usually asked by the

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<sup>18</sup> Application at 3.

<sup>19</sup> *Id.* at 7.

<sup>20</sup> *See id.*

independent third-party verifier. The salespeople could unduly influence customers' responses to the questions. The PUCO should deny AEP Energy's application.

#### **IV. CONCLUSION**

The marketing of gas and electric services through door-to-door sales is particularly prone to egregious sales practices that can result in consumers not being provided access to the adequate, reliable, and reasonably priced natural gas and electric services they should receive under Ohio law.<sup>21</sup> Many of these high-pressure practices have occurred in Ohio and have prompted the PUCO to adopt consumer protections. Among those protections is that customers' consent to change their supplier must be independently verified by a third-party. Additionally, the third-party verification process helps to establish that customers understand the significant terms and conditions in their new supplier's contract. The PUCO should not waive these consumer protections, but instead should add to the consumer protections in its rules.

AEP Energy has not met its burden of proof that there is good cause for its proposed alternative to the PUCO's independent third-party verification process. AEP Energy's proposal would not sufficiently protect consumers from potential harm through unfair, deceptive, and unconscionable practices in the marketing and sale of competitive electric and natural gas services, as required by Ohio law.<sup>22</sup> To protect consumers, the PUCO should deny AEP Energy's application.

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<sup>21</sup> See R.C. 4929.02(A)(2).

<sup>22</sup> R.C. 4928.10(D)(4); R.C. 4929.22(D)(3).

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of these Comments was served on the persons stated below via electronic transmission, this 8<sup>th</sup> day of April 2019.

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**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/8/2019 4:43:26 PM**

**in**

**Case No(s). 18-0371-EL-WVR, 18-0372-GA-WVR**

Summary: Comments Comments on AEP Energy's Proposal to Alter Verification of Residential Consumers' Consent to Change Energy Suppliers Through Door-to-Door Sales by The Office of the Ohio Consumers' Counsel electronically filed by Ms. Jamie Williams on behalf of Etter, Terry Mr.